



**Permanent Select Committee
on Intelligence
U.S. House of Representatives**

August 3, 2020

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, D.C. 20528

Mr. Horace Jen
Acting Under Secretary
Office of Intelligence and Analysis
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Acting Secretary Wolf and Acting Under Secretary Jen:

Since its July 22, 2020 letter requesting documents, the House Permanent Select Committee on Intelligence (the “Committee”) has learned more about actions undertaken by Department of Homeland Security (“DHS” or the “Department”) personnel in Portland, Oregon and elsewhere, including personnel with DHS’ Office of Intelligence and Analysis (“I&A”), an element of the U.S. Intelligence Community.

Let me be clear: reporting regarding the monitoring of peaceful protesters, creating and disseminating intelligence reports about journalists and protesters, and potential exploitation of electronic devices is deeply troubling.

The revelations require a full accounting, and, if substantiated, must never be allowed to occur again. The Committee is therefore initiating, pursuant to its unique oversight and legislative authority, an investigation of I&A’s activities in Portland and in support of the Department’s response to protests nationwide.

According to press reports, I&A engaged in intelligence collection and reporting on journalists¹ and non-violent protestors.² Recently reassigned Acting Under Secretary for Intelligence and Analysis Brian Murphy sought on July 25, 2020 to change the content of intelligence reports by directing that all references to “VIOLENT OPPORTUNISTS” be replaced with “VIOLENT ANTIFA ANARCHISTS INSPIRED.”³ I&A also disseminated as intelligence a conversation that was conducted among Portland protesters using an encrypted messaging application, even though it did not “show the protesters planning to harass or target police or damage property.”⁴ Moreover, a recent report suggests that Ken Cuccinelli, the senior official performing the duties of the Deputy Secretary, limited the role of I&A officials charged with ensuring the office’s adherence to civil liberties and privacy rules at the request of I&A senior leadership.⁵

The Committee’s recent oversight engagements with I&A have only heightened our alarm. The Committee is concerned that then-Under Secretary Murphy provided incomplete and potentially misleading information to Committee staff regarding I&A’s activities in Portland, including the actions of its personnel in the city, and I&A’s intelligence collection, analysis, and dissemination efforts related to Portland and other protests nationwide.

I&A’s legal justification for its “expanded” domestic intelligence activities is also unpersuasive. I&A’s intelligence mission is important, but purposefully limited. Yet, under an aggressive and novel legal interpretation, I&A appears to believe that it can collect and disseminate intelligence regarding a wide range of “threats” to damage or destroy public monuments, memorials, and statues—no matter how minor—in addition to other federal property, and that even isolated incidents of defacement and vandalism of such objects, when viewed in conjunction with other such events elsewhere in the country, could constitute a threat significant enough to justify I&A’s intelligence activities. The implications of this reinterpretation of I&A’s authorities are chilling and inconsistent with constitutional and other legal protections Americans deserve and expect.

¹ *DHS compiled ‘intelligence reports’ on journalists who published leaked documents.* Updated on July 30, 2020 at 10:57 p.m. EDT. https://www.washingtonpost.com/national-security/dhs-compiled-intelligence-reports-on-journalists-who-published-leaked-documents/2020/07/30/5be5ec9e-d25b-11ea-9038-af089b63ac21_story.html.

² *DHS official whose office compiled ‘intelligence reports’ on journalists and protesters has been removed from his job.* The Washington Post. Updated on August 1, 2020 at 6:42 p.m. EDT. https://www.washingtonpost.com/national-security/dhs-official-whose-office-compiled-intelligence-reports-on-journalists-and-protesters-has-been-removed-from-his-job/2020/08/01/f01247be-d3ff-11ea-8d32-1ebf4e9d8e0d_story.html.

³ *Immediate change of definitions for Portland.* E-mail, apparently from Brian Murphy, Acting Under Secretary for Intelligence and Analysis, DHS, to other I&A senior officials. Sent on July 25, 2020 at 11:17:05 a.m. EDT. Uploaded to Twitter by Benjamin Wittes on July 26, 2020 at 7:06 a.m. EDT. <https://twitter.com/benjaminwittes/status/1287343604038598656>.

⁴ *DHS analyzed protester communications, raising questions about previous statements by senior department official.* The Washington Post. Updated on July 31, 2020 at 7:32 p.m. EDT. https://www.washingtonpost.com/national-security/dhs-analyzed-protester-communications-raising-questions-about-previous-statements-by-senior-department-official/2020/07/31/313163c6-d359-11ea-9038-af089b63ac21_story.html.

⁵ *Cuccinelli relaxed oversight of DHS intel office.* Politico. August 2, 2020 at 7:00 a.m. EDT. <https://www.politico.com/news/2020/08/02/cuccinelli-oversight-homeland-security-intel-390185>.

I&A's activities have not occurred in a vacuum. In recent weeks, DHS has engaged in aggressive operations, some going well beyond the Department's traditional missions. According to press reporting, DHS officers deployed to Portland over the objections of state and local officials.^{6,7} Such officers then apparently used unmarked vehicles to – in Acting Secretary Wolf's words, “proactively arrest individuals” to protect federal facilities⁸ – which seems to have included the arrest or detention of Americans participating in protests, without probable cause and potentially violating such persons' constitutional rights.⁹ When asked at a news conference about these arrests, Kris Kline, Deputy Director of the Federal Protective Service, appeared not to know what level of detention amounted to a constitutional arrest.¹⁰ These developments in Portland raise questions about the activities, responsibilities, and conduct of I&A personnel present in the city, including any involvement they may have had in the activities of other DHS components on the ground, such as detentions, interviews, or debriefings of any kind.

In response to the Committee's July 22, 2020 letter and its subsequent requests, I&A was initially cooperative, providing a partial set of the requested documents and making officials available to the Committee for briefings. Cooperation has since decreased significantly and the provision of materials has paused, as public revelations and scrutiny have increased and the Department has announced internal reviews.

Public scrutiny, ongoing executive branch reviews, or other investigations cannot serve as a proper basis for pausing oversight by the Committee, or for delaying or withholding the timely provision of information or personnel the Committee has requested in order to carry out its authorized responsibilities.

Therefore, the Committee respectfully requests that you:

1) Produce to the Committee, no later than **Monday, August 10, 2020**:

(a) all of the remaining documents requested in the Committee's July 22, 2020 letter;

⁶ *Federal Agents Unleash Militarized Crackdown on Portland*. The New York Times. July 17, 2020. <https://www.nytimes.com/2020/07/17/us/portland-protests.html>.

⁷ *'It Was Like Being Preyed Upon': Portland Protesters Say Federal Officers in Unmarked Vans are Detaining Them*. The Washington Post. Updated on July 17, 2020 at 8:24 p.m. EDT. <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>.

⁸ *Acting DHS Sec. Says Due to Lack of Local Law Enforcement in Portland, Feds Must 'Proactively Arrest Individuals'*. Media ITE. Updated on July 21, 2020 at 10:18 p.m. EDT. <https://www.mediaite.com/tv/acting-dhs-sec-says-due-to-lack-of-local-law-enforcement-in-portland-feds-must-proactively-arrest-individuals/>.

⁹ *'It Was Like Being Preyed Upon': Portland Protesters Say Federal Officers in Unmarked Vans are Detaining Them*. The Washington Post. Updated on July 17, 2020 at 8:24 p.m. EDT. <https://www.washingtonpost.com/nation/2020/07/17/portland-protests-federal-arrests/>.

¹⁰ *Unpacking DHS's Troubling Explanation of the Portland Van Video*. Lawfare. Updated on July 25, 2020 at 10:29 a.m. EDT. <https://www.lawfareblog.com/unpacking-dhss-troubling-explanation-portland-van-video>.

- (b) the Field Intelligence Reports (“FIRS”), Open Source Intelligence Reports (“OSIRS”), ‘baseball cards’, and finished intelligence (“FINTEL”) supporting the analysis/designation in Mr. Murphy’s email of July 25, 2020¹¹ (as requested by Committee staff via email on July 26, 2020);
 - (c) the four reports referred to in the July 30, 2020¹² and July 31, 2020¹³ articles in the Washington Post (three of which were requested by email on July 30, 2020), three of which also were made publicly available on Twitter^{14,15,16};
 - (d) policies and guidance including or related to: custodial debriefings or interviews (including any policies or guidance issued in connection with I&A’s activities in Portland); open source collection; drafting, review, and dissemination of FIRS, IIRs, OSIRs, and FINTEL; intelligence requirements and essential elements of information (“EEIs”); standing information needs; analytic lexicon and terminology and usage; analytic tradecraft standards and their implementation; and
- 2) Make the following officials available for transcribed interviews during the month of August:
- (a) Former Acting Under Secretary for Intelligence and Analysis Brian Murphy;
 - (b) Deputy Under Secretary for Intelligence Enterprise Operations Horace Jen, or any other official performing the duties of Acting Under Secretary for Intelligence and Analysis;
 - (c) Chief of Staff to the Under Secretary for Intelligence and Analysis;
 - (d) Associate General Counsel for Intelligence;

¹¹ *Immediate change of definitions for Portland*. E-mail, apparently from Brian Murphy, Acting Under Secretary for Intelligence and Analysis, DHS, to other I&A senior officials. Sent on July 25, 2020 at 11:17:05 a.m. EDT. Uploaded to Twitter by Benjamin Wittes on July 26, 2020 at 7:06 a.m. EDT. <https://twitter.com/benjaminwittes/status/1287343604038598656>.

¹² *DHS compiled ‘intelligence reports’ on journalists who published leaked documents*. Updated on July 30, 2020 at 10:57 p.m. EDT. https://www.washingtonpost.com/national-security/dhs-compiled-intelligence-reports-on-journalists-who-published-leaked-documents/2020/07/30/5be5ec9e-d25b-11ea-9038-af089b63ac21_story.html.

¹³ *DHS analyzed protester communications, raising questions about previous statements by senior department official*. The Washington Post. Updated on July 31, 2020 at 7:32 p.m. EDT. https://www.washingtonpost.com/national-security/dhs-analyzed-protester-communications-raising-questions-about-previous-statements-by-senior-department-official/2020/07/31/313163c6-d359-11ea-9038-af089b63ac21_story.html.

¹⁴ *Document #1, labeled OSIR-04001-0952-20*. Uploaded to Twitter by Benjamin Wittes on July 31, 2020. <https://twitter.com/benjaminwittes/status/1289297101759733760>; and <https://twitter.com/benjaminwittes/status/1289297117958135809>.

¹⁵ *Document #2, labeled OSIR-04001-0932-20*. Uploaded to Twitter by Benjamin Wittes on July 31, 2020. <https://twitter.com/benjaminwittes/status/1289298151422140416>.

¹⁶ *Document #3, OSIR-04001-0937-20*. Uploaded to Twitter by Benjamin Wittes on July 31, 2020. <https://twitter.com/benjaminwittes/status/1289298871198208000>.

- (e) Director of the Counterterrorism Mission Center (CTMC);
- (f) Director of the Current and Emerging Threats Center (CETC);
- (g) Director of Homeland Identities, Targeting, & Exploitation Center (HITEC);
- (h) Director of Field Operations (FOD); and
- (i) The Regional Director or other I&A officer principally responsible for I&A activities with respect to DHS operations in Portland.

You are required by law to fulfill these requests. 50 U.S.C. § 3092 obligates the heads of Departments involved in intelligence activities to keep the Committee fully and currently informed of such activities. The statute further obligates such officials, on the Committee's request, to provide "any information or material concerning intelligence activities (including the legal basis under which the intelligence activity is being or was conducted)."

The Committee looks forward to your prompt and complete compliance, and Committee staff will coordinate to schedule the requested transcribed interviews.

If the Department does not produce the information and persons requested, and according to the timetable described in this letter, the Committee will consider all options necessary to obtain compliance—including compulsory process.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam B. Schiff".

Adam B. Schiff
Chairman

cc: The Honorable Devin Nunes
Ranking Member